IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3854 OF 1998

Capital Market Publishers India Ltd. ...Plaintiffs

Versus

Nova Surgikos Ltd. ...Defendants

Shri Clive D'Souza for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : JULY 31, 2007.

JUDGMENT:

1. The suit has been listed under the caption of "Undefended Suits for Exparte Decree". The learned counsel for the Plaintiffs has tendered on record an affidavit of Savio Mozez Fernandes, the Assitant Manager of the Plaintiffs. The said affidavit has been filed in lieu of evidence. Affidavit is marked "X" for identification and is taken on record. A compilation of the documents tendered by the Advocates for the Plaintiffs is marked "Y" for identification and is taken on record.

2. According to case of the Plaintiffs the Defendants placed full page colour advertisement in the issue of "capital market" dated 31st July, 1995. The Plaintiffs raised invoice dated 31st July, 1995 at discounted rate in the sum of Rs.68,750/-. The

Plaintiffs issued letters dated 25th February, 1996 and 12th April, 1996 to the Defendants calling upon them to pay the said amount. As the amount was not paid, a letter dated 08th May, 1996 was issued by the Plaintiffs to the Defendants calling upon them to pay the amount failing which legal action will be taken. As the payment was not made, present suit has been filed.

3. Perusal of the affidavit of Savio Fernandes shows that the claim in the suit has been duly proved by the Plaintiffs. A copy of the fax message send by the Defendants on 28th July, 1995 has been produced on record. Office copy of the invoice dated 30th September, 1995 is produced on record and the same has been proved by the said affidavit. There is no written statement filed by the Defendants.

4. As the claim of the Plaintiffs in this suit has been duly proved, the Plaintiffs are entitled to a decree. The Plaintiffs have claimed further interest at the rate of 12 per cent per annum. There is no stipulation in the invoice as regards payment of interest on the over due amount. However, as the claim arises out of a commercial transaction and considering the facts and circumstances of the case, further interest will be payable at the rate of 9 per cent per

annum.

5. Hence, there will be a decree in terms of prayer clauses (a) and (b) with modification that interest will be payable at the rate of 9 per cent per annum instead of 12 per cent per annum.

6. The Plaintiffs will be entitled to refund of court fees, as per the rules.

7. Certified copy is expedited.

JUDGE